

HB 474-FN - AS INTRODUCED

2023 SESSION

23-0556

04/08

HOUSE BILL ***474-FN***

AN ACT relative to enforcement of federal firearms laws and establishing penalties.

SPONSORS: Rep. T. Mannion, Hills. 1

COMMITTEE: Criminal Justice and Public Safety

ANALYSIS

This bill prohibits the enforcement of any federal law or rule that might impair a person's natural right to firearm ownership and natural right to self-defense and requires any public official who attempts to enforce such a federal law to be terminated from their position.

Explanation: Matter added to current law appears in ***bold italics***.

Matter removed from current law appears [~~in brackets and struck through.~~]

Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

23-0556

04/08

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty Three

AN ACT relative to enforcement of federal firearms laws and establishing penalties.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 Findings. The general court finds and declares that:

- I. The general court of the state of New Hampshire is firmly resolved to support and defend the Constitution of the United States against every aggression, whether foreign or domestic, and is duty-bound to oppose every infraction of those principles that constitute the basis of the union of the states because only a faithful observance of those principles can secure the union's existence and the public happiness.
- II. Acting through the Constitution of the United States, the people of the several states created the federal government to be their agent in the exercise of a few de fined powers, while reserving for the state governments the power to legislate on matters concerning the lives, liberties, and properties of citizens in the ordinary course of affairs.
- III. The limitation of the federal government's power is affirmed under Fourteenth Amendment of the Constitution of the United States, which defines the total scope of federal powers as being those which has been delegated by the people of the several states to the federal government and all powers not delegated to the federal government in the Constitution of the United States are reserved to the states respectively or the people themselves.
- IV. If the federal government assumes powers that the people did not grant it in the Constitution of the United States, its acts are unauthoritative, void, and of no force.
- V. The several states of the United States respect the proper role of the federal government but reject the proposition that such respect requires unlimited submission. If the federal government, created by a compact among the states, were the exclusive or final judge of the extent of the powers granted to it by the states through the Constitution of the United States, the federal government's discretion, and not the Constitution of the United States, would necessarily become the measure of those powers. To the contrary, as in all other cases of compacts among powers having no common judge, each party has an equal right to judge for itself as to whether infractions of the compact have occurred, as well as to determine the mode and measure of redress. Although the several states have granted supremacy to laws and treaties made under the powers granted in the Constitution of the UnitedStates, such supremacy does not extend to various federal statutes, executive orders, administrative orders, court orders, rules, regulations, or other actions that collect data or restrict or prohibit the manufacture , ownership, or use of firearms, firearm accessories, or ammunition exclusively within the borders of New Hampshire; such statutes, executive orders, administrative orders, court orders, rules, regulations, and other actions exceed the powers granted to the federal government except to the extent they are necessary and proper for governing and regulating the United States Armed Forces or for organizing, arming, and disciplining militia forces actively employed in the service of the United States Armed Forces.
- VI. The people of the several states have given Congress the power "to regulate commerce with foreign nations, and among the several states", but "regulating commerce" does not include the power to limit citizens' right to keep and bear arms in defense of their families, neighbors, persons, or property nor to dictate what sorts of arms and accessories law-abiding Granite Staters may buy, sell, exchange, or otherwise possess within the borders.
- VII. The people of the several states have also granted Congress the powers "to lay and collect taxes, duties, imports, and excises, to pay the debts, and provide for the common defense and general welfare of the United States" and "to make all laws which shall be necessary and proper for carrying into execution the powers vested by the Constitution of the United States in the government of the United States, or in any department or office thereof". These constitutional provisions merely identify the means by which the federal government may execute its limited powers and shall not be construed to grant unlimited power because to do so would be to destroy the carefully constructed equilibrium between the federal and state governments. Consequently, the

general assembly rejects any claim that the taxing and spending powers of Congress may be used to diminish in any way the right of the people to keep and bear arms.

VIII. The people of New Hampshire have vested the general court with the authority to regulate the manufacture, possession, exchange, and use of firearms within the borders of this state.

IX. The general court of the state of New Hampshire strongly supports responsible gun ownership, including parental supervision of minors in the proper use, storage, and ownership of all firearms; the prompt reporting of stolen firearms; and the proper enforcement of all state gun laws. The general court of the state of New Hampshire condemns any use of any firearm in any criminal or unlawful activity.

2 New Subdivision; Protection of Natural Right to Property and Self-defense.. Amend RSA 159-E by inserting after section 3 the following new subdivision:

Protection of Natural Right to Property and Self-defense.

159-E:4 Protection of Rights. The following federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations shall be considered infringements on the people's right to keep and bear arms, as guaranteed by the Second Amendment of the Constitution of the United States and part I, article 2-a of the New Hampshire constitution, within the borders of this state including, but not limited to:

I. Any tax, levy, fee, or stamp imposed on firearms, firearm accessories, or ammunition not common to all other goods and services.

II. Any registering or tracking of firearms, firearm accessories, or ammunition.

III. Any registration or tracking of the owners of firearms, firearm accessories, or ammunition.

IV. Any act forbidding the possession, ownership, use, or transfer of a firearm, firearm accessory, or ammunition by law-abiding citizens.

V. Any act ordering the confiscation of firearms, firearm accessories, or ammunition from law-abiding citizens.

159-E:5 Unenforceability of Federal Law. All federal acts, laws, executive orders, administrative orders, court orders, rules, and regulations, whether enacted before or after the provisions of this chapter that infringe on the people's right to keep and bear arms shall be invalid in this state, specifically rejected by this state, and shall be considered null, void, and of no effect in this state.

159-E:6 Duty of Courts and Law Enforcement Agencies. It shall be the duty of the courts and law enforcement agencies of this state to protect the rights of law-abiding citizens to keep and bear arms within the borders of this state and to protect these rights from the infringements defined under RSA 159-E:4.

159-E:7 Authority of Public Officers or Employees. No entity or person, including any public officer or employee of this state or any political subdivision of this state, shall have the authority to enforce or attempt to enforce any federal acts, laws, executive orders, administrative orders, court orders, rules, regulations, statutes, or ordinances infringing on the right to keep and bear arms as described under RSA 159-E:4.

159-E:8 Actions Against a Public Officer for Deprivation of Rights.

I. Any entity or person who knowingly violates the provisions of RSA 159-E:7 or otherwise knowingly deprives a citizen of New Hampshire of the rights described while acting under the color of any state or federal law shall be liable to the injured party in an action at law, suit in equity, or other legal proceeding for redress.

II. In such actions, the court may award the prevailing party, other than the state of New Hampshire or any political subdivision of the state, reasonable attorney's fees and costs.

III. Sovereign, official, or qualified immunity shall not be an affirmative defense in an action under this section.

159-E:9 Ineligibility for Employment.

I. Any person acting as an official, agent, employee, or deputy of the government of the United States, or otherwise acting under the color of federal law within the borders of this state shall be permanently ineligible to serve as a law enforcement officer or to supervise law enforcement officers for the state or any political subdivision of the state if such person knowingly:

(a) Enforces or attempts to enforce any of the infringements identified in RSA 159-E:4; or

(b) Gives material aid and support to the efforts of another who enforces or attempts to enforce any of the infringements identified in RSA 159-E:4

II. Neither the state nor any political subdivision of the state shall employ as a law enforcement officer or supervisor of law enforcement officers any person who is ineligible to serve in such capacity under this section.

III. Any person residing or conducting business in a jurisdiction who believes that a law enforcement officer or supervisor of law enforcement officers of such jurisdiction has taken action that would render that officer or supervisor ineligible under this section to serve in such capacity shall have standing to pursue an action for declaratory judgment in the superior court of the county in which the action allegedly occurred, with respect to the employment eligibility of the law enforcement officer or the supervisor of law enforcement officers under this section.

IV. If a court determines that a law enforcement officer or supervisor of law enforcement officers has taken any action that would render him or her ineligible to serve in that capacity under this section:

(a) The law enforcement officer or supervisor of law enforcement officers shall immediately be terminated from his or her position; and

(b) The law enforcement officer or supervisor of law enforcement officers shall be required to pay the court costs and attorney's fees associated with the action that resulted in the finding of ineligibility.

V. Nothing in this section shall preclude a person's right of appeal or remediation, as provided under RSA 541.

159-E:10 Definition. In this subdivision, the term "law-abiding citizen" shall mean a person who is not otherwise precluded under state law from possessing a firearm and shall not be construed to include anyone who is not legally present in the United States or the state of New Hampshire.

159-E:11 Severability. If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such determination shall not affect the provisions or applications of this subdivision that may be given effect without the invalid provision or application, and the provisions of this subdivision are severable.

3 Effective Date. This act shall take effect 60 days after its passage.

LBA
23-0556
1/6/23

**HB 474-FN- FISCAL NOTE
AS INTRODUCED**

AN ACT relative to enforcement of federal firearms laws and establishing penalties.

FISCAL IMPACT: State County Local None

STATE:	Estimated Increase / (Decrease)			
	FY 2023	FY 2024	FY 2025	FY 2026
Appropriation	\$0	\$0	\$0	\$0
Revenue	\$0	\$0	\$0	\$0
Expenditures	\$0	Indeterminable	Indeterminable	Indeterminable
Funding Source:	<input checked="" type="checkbox"/> General	<input type="checkbox"/> Education	<input type="checkbox"/> Highway	<input type="checkbox"/> Other

METHODOLOGY:

This bill prohibits the enforcement of any federal law or rule that might impair a person's natural right to firearm ownership and natural right to self-defense and requires any public official who attempts to enforce such a federal law to be terminated from their position. The Department of Justice states it is unclear who would have jurisdiction to enforce the criminal provisions or the employment provisions, and therefore it is unable to determine if it will incur any fiscal impact under this bill.

This bill creates a private cause of action for a violation of the statutory provisions created by the bill and grants standing to any person residing or conducting business to bring a declaratory judgment action in Superior Court against any law enforcement officer or law enforcement supervisor who may be ineligible for employment under the statute created by the bill. The Judicial Branch states these provisions may have an indeterminable impact on its expenditures.

AGENCIES CONTACTED:

Department of Justice and Judicial Branch